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2
3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**

5 * * *

6 JEREMY WILLIAMS,

7 Plaintiff,

8 v.

9 PATRICIA HAN, ET AL.,

10 Defendants.

Case No. 2:19-cv-01490-APG-DJA

11 **ORDER**

12 This matter is before the Court on Plaintiff Jeremy Williams' Motion/Application for
13 Leave to Proceed in forma pauperis (ECF No. 1) and Complaint (ECF No. 1-1) filed on August
14 26, 2019.

15 **I. *In Forma Pauperis* Application**

16 Plaintiff has submitted the affidavit required by § 1915(a) showing an inability to prepay
17 fees and costs or give security for them. Plaintiff is currently incarcerated and the Financial
18 Certificate submitted along with his Application indicates that his inmate account has a current
19 monthly balance of \$0.05, an average monthly balance of \$3.61, and an average monthly deposit
20 of \$71.41. (ECF No. 1). Based on the financial information provided, the Court finds that
21 Plaintiff is unable to pay an initial partial filing fee. Accordingly, Plaintiff's request to proceed in
22 forma pauperis is granted pursuant to § 1915(a). However, even if this action is dismissed, the
23 full filing fee of \$350.00 must still be paid pursuant to 28 U.S.C. § 1915(b)(2), as amended by the
24 Prison Litigation Reform Act of 1995. Plaintiff shall be required to make payments of 20% of the
25 preceding month's deposits to the prisoner's account, in months that the account exceeds \$10.00,
26 until the full filing fee has been paid for this action. The Court will now review Plaintiff's
27 Complaint.

28 **II. Screening the Complaint**

1 Upon granting a request to proceed in forma pauperis, a court must additionally screen a
2 complaint pursuant to § 1915(e). Federal courts are given the authority dismiss a case if the
3 action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted,
4 or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. §
5 1915(e)(2). “To survive a motion to dismiss, a complaint must contain sufficient factual matter,
6 accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 129
7 S.Ct. 1337, 1349 (2009) (internal quotations and citation omitted). When a court dismisses a
8 complaint under § 1915(e), the plaintiff should be given leave to amend the complaint with
9 directions as to curing its deficiencies, unless it is clear from the face of the complaint that the
10 deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106
11 (9th Cir.1995).

12 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a
13 complaint for failure to state a claim upon which relief can be granted. Review under Rule
14 12(b)(6) is essentially a ruling on a question of law. *North Star Intern. v. Arizona Corp. Comm'n*,
15 720 F.2d 578, 580 (9th Cir. 1983). In considering whether the plaintiff has stated a claim upon
16 which relief can be granted, all material allegations in the complaint are accepted as true and are
17 to be construed in the light most favorable to the plaintiff. *Russell v. Landrieu*, 621 F.2d 1037,
18 1039 (9th Cir. 1980). Allegations of a pro se complaint are held to less stringent standards than
19 formal pleadings drafted by lawyers. *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam).

20 As a general matter, federal courts are courts of limited jurisdiction and possess only that
21 power authorized by the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004).
22 Pursuant to 28 U.S.C. § 1331, federal district courts have original jurisdiction over “all civil
23 actions arising under the Constitution, laws, or treaties of the United States.” “A case ‘arises
24 under’ federal law either where federal law creates the cause of action or ‘where the vindication
25 of a right under state law necessarily turn[s] on some construction of federal law.’” *Republican
26 Party of Guam v. Gutierrez*, 277 F.3d 1086, 1088-89 (9th Cir. 2002) (quoting *Franchise Tax Bd.
27 v. Construction Laborers Vacation Trust*, 463 U.S. 1, 8-9 (1983)). The presence or absence of
28 federal-question jurisdiction is governed by the “well-pleaded complaint rule.” *Caterpillar, Inc.*

1 *v. Williams*, 482 U.S. 386, 392 (1987). Under the well-pleaded complaint rule, “federal
2 jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly
3 pleaded complaint.” *Id.* Here, Plaintiff alleges civil rights violations under 42 U.S.C. § 1983
4 based on his arrest for battery with substantial bodily harm. However, because the Court finds
5 that Plaintiff failed to properly bring a claim under Section 1983 (see discussion below), federal
6 question jurisdiction does not exist at this time.

7 42 U.S.C. § 1983 creates a path for the private enforcement of substantive rights created
8 by the Constitution and Federal Statutes. *Graham v. Connor*, 490 U.S. 386, 393-94 (1989). To
9 the extent that Plaintiff is seeking to state a claim under § 1983, a plaintiff “must allege the
10 violation of a right secured by the Constitution and the laws of the United States, and must show
11 that the alleged deprivation was committed by a person acting under color of law.” *West v.*
12 *Atkins*, 487 U.S. 42, 48-49 (1988). A person acts under “color of law” if he “exercise[s] power
13 possessed by virtue of state law and made possible only because the wrongdoer is clothed with
14 the authority of state law.” *Id.*

15 Plaintiff seeks to bring claims pursuant to 42 U.S.C. § 1983 alleging violation of his
16 Eighth Amendment and Fourteenth Amendment rights against two police officers, North Las
17 Vegas Police Department, and Patricia Han. He claims that Han gave false statements to the
18 police stating that he knocked her teeth out, punched and yelled at her and went to family court to
19 obtain a TRO. Plaintiff alleges that Officer Jordan investigated Han’s claims and arrested
20 Plaintiff without probable cause. He further alleges that Officer Jordan failed to adequately
21 investigate and did not follow unspecified policies and procedures. Plaintiff alleges that Officer
22 Eberl heard conflicting statements from Han and still participated in the arrest. Finally, Plaintiff
23 alleges that North Las Vegas Police Department failed to properly train its officers to investigate.
24 He seeks half a million dollars for the alleged incident.

25 Overall, it appears as though Plaintiff is attempting to assert a claim of false arrest.
26 However, his Complaint indicates that a parallel state court case was filed over the same factual
27 allegations. To the extent that his claim was already asserted in that case, then his claim in this
28 case may be barred. Further, it is unclear what claim he is seeking to bring against Patricia Han.

1 Moreover, he indicates that he seeks to bring claims against the individual officers in both their
2 official and individual capacity along with North Las Vegas Police Department, but has failed to
3 meet the standard for establishing that their official capacity is proper and that there was a policy
4 or procedure that makes municipal liability appropriate here. Plaintiff will be given leave to
5 amend and should include specific factual allegations setting forth each claim, against each
6 defendant, in order for the Court to determine if his claims are able to survive screening.

7 **III. Conclusion**

8 IT IS THEREFORE ORDERED that Plaintiff's Motion/Application to Proceed *in forma*
9 *pauperis* (ECF No. 1) is **granted**. Plaintiff shall not be required to pay an initial partial filing fee.
10 However, even if this action is dismissed, the full filing fee of \$350.00 must still be paid pursuant
11 to 28 U.S.C. § 1915(b)(2).

12 IT IS FURTHER ORDERED that Plaintiff is permitted to maintain this action to its
13 conclusion without the necessity of prepaying any additional fees or costs or giving security
14 therefor. This Order granting leave to proceed *in forma pauperis* shall not extend to the issuance
15 of subpoenas at government expense.

16 IT IS FURTHER ORDERED that pursuant to 28 U.S.C. § 1915(b)(2), the Nevada
17 Department of Corrections shall pay to the Clerk of the United States District Court, District of
18 Nevada, twenty percent of the preceding month's deposits to Plaintiff's account (inmate
19 #1056617), in the months that the account exceeds \$10.00, until the full \$350 filing fee has been
20 paid for this action. The Clerk of the Court shall send a copy of this Order to the Finance
21 Division of the Clerk's Office and to the attention of the Chief of Inmate Services for the Nevada
22 Department of Prisons, P.O. Box 7011, Carson City, NV 89702.

23 IT IS FURTHER ORDERED that the Clerk of the Court shall file Plaintiff's Complaint
24 (ECF No. 1-1), but shall not issue summons.

25 IT IS FURTHER ORDERED that the Complaint is dismissed without prejudice for failure
26 to state a claim upon which relief can be granted, with leave to amend. Plaintiff will have until
27 April 15, 2020 to file an amended complaint correcting the noted deficiencies. If Plaintiff
28 chooses to amend the complaint, Plaintiff is informed that the Court cannot refer to a prior

1 pleading (i.e., the original complaint) in order to make the amended complaint complete. This is
2 because, as a general rule, an amended complaint supersedes the original complaint. Local Rule
3 15-1(a) requires that an amended complaint be complete in itself without reference to any prior
4 pleading. Once a plaintiff files an amended complaint, the original complaint no longer serves
5 any function in the case. Therefore, in an amended complaint, as in an original complaint, each
6 claim and the involvement of each Defendant must be sufficiently alleged. **Failure to comply**
7 **with this Order may result in the Court recommending that this action be dismissed.**

8
9 DATED: March 25, 2020.

A handwritten signature in blue ink, appearing to read 'D. Albrechts', is written over a horizontal line.

DANIEL J. ALBRECHTS
UNITED STATES MAGISTRATE JUDGE